

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Toshio HOSOGAI

Filed: July 27, 2001

Art Unit: 3765

Examiner: Alissa L. Hoey

Serial No.: 09/916,631

Confirmation: 9472

Title: IMPROVED REVERSIBLE ZIPPER FLY COVER AND
METHOD FOR MANUFACTURING THE SAME

**APPEAL BRIEF
AND CONFIRMATION OF CORRESPONDENCE ADDRESS**

Board of Patent Appeals and Interferences
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Board:

The Notice of Appeal in this case was received by the U.S. Patent Office on March 23, 2007. A Petition for Extension of Time for two months is filed herewith. This Appeal Brief is due on July 23, 2007.

CONFIRMATION OF CORRESPONDENCE ADDRESS

Please note that in May 2007, the prior attorney in this case, John Gugliotta, erroneously filed a Change Of Correspondence Address asserting he was attorney of record when he was not, due to the facts that (a) Mr. Gugliotta formally withdrew and (b) a Power of Attorney was properly filed for the undersigned attorney. Mr. Gugliotta explained to the undersigned that when he moved his entire office, the instant application was mistakenly included in his address changing for approximately 600 applications.

Accordingly, the proper correspondence address for this application remains the address associated with Customer Number 24,259.

(1) REAL PARTY IN INTEREST

This application is assigned to Sarah Pinkman, Inc., a corporation of the state of California, who is the real party in interest.

(2) RELATED APPEALS AND INTERFERENCES

None

(3) STATUS OF CLAIMS

Claims 1 and 5-8 are pending in this application, and all are rejected. Claims 1, 5 and 7 are independent.

(4) STATUS OF AMENDMENTS

No amendments were filed subsequent to the final rejection.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1

Claim 1 is directed to an improved reversible zipper fly cover comprising a zipper having a first attachment strip opposite a second attachment strip. First and second panel zipper flaps are respectively connected to the first and second attachment strips by first and second attachment seams, *each of the first and second attachment strips being devoid of an enclosing hem.*

Fig. 2 of the present application, as amended in the amendment filed February 4, 2005, reproduced below and annotated, shows a zipper having first attachment strip 22 opposite to second attachment strip 24. First panel zipper flap 14 is connected to first attachment strip 22 by a first attachment seam. Second panel zipper flap 16 is connected to second attachment strip 24 by a second attachment seam.

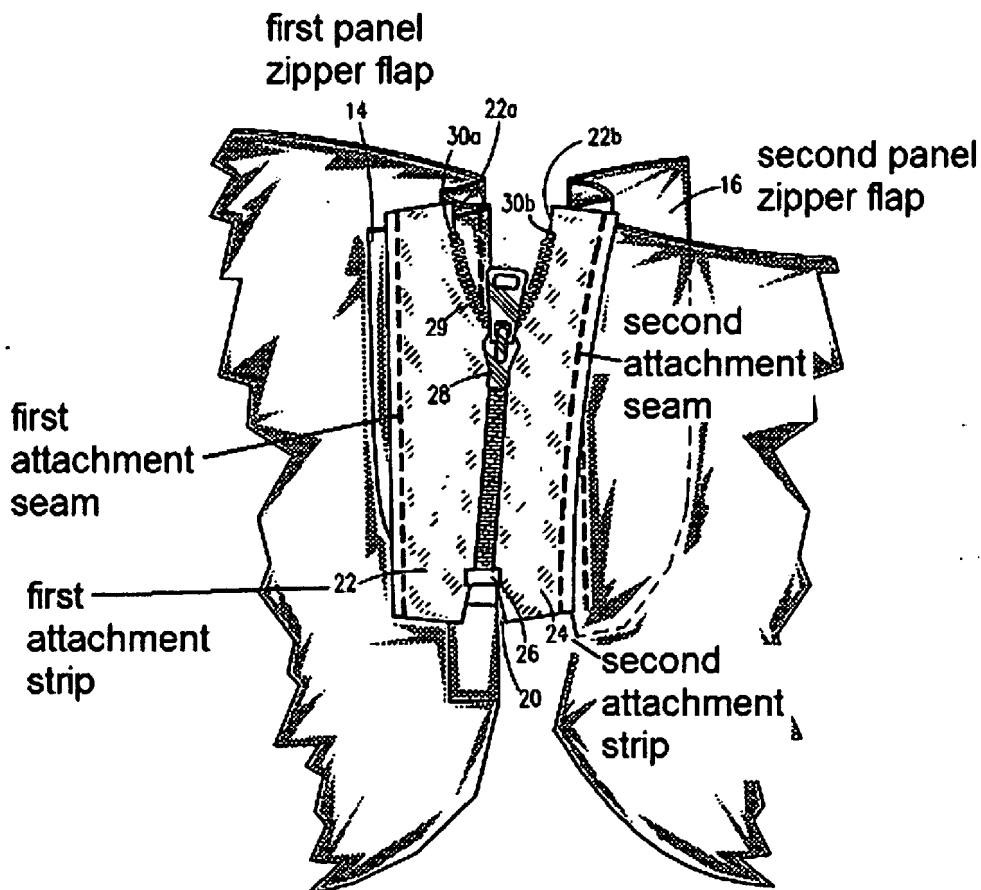


Figure 2

The amendment filed August 4, 2006 amended the first paragraph of page 7 as below:

The first attachment strip 22 is affixed to the first panel zipper flap 14, offset from an outer edge, by an attachment seam. Similarly, the second attachment strip 24 is affixed to the second panel zipper flap 16, offset from an outer edge, by an similar attachment seam. The first attachment strip 22 and the second attachment strip 24 are each devoid of a hem enclosing the attachment seam.

Claim 1 further recites that first and second fly cover flaps are formed by respectively attaching the first and second panel zipper flaps to first and second panels by first and second fly cover finish seams.

Fig. 3 of the present application, reproduced below and annotated, shows first (inner) fly cover flap 32 formed by attaching first panel zipper flap 14 to first panel 10 by first fly cover finish seam 34.

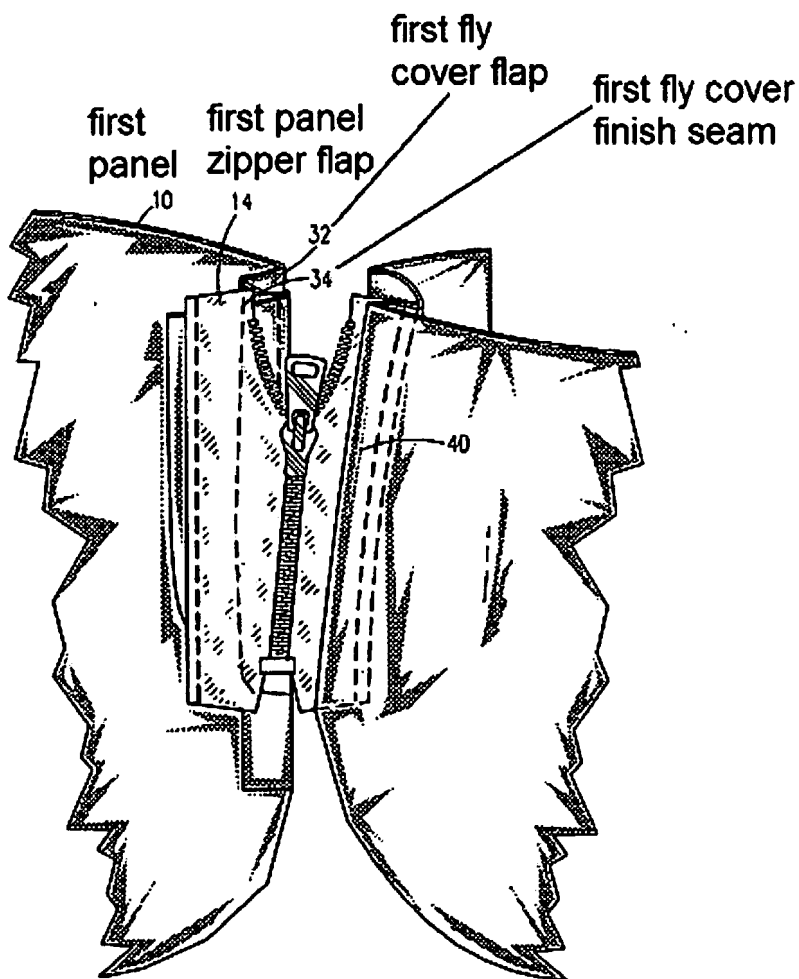
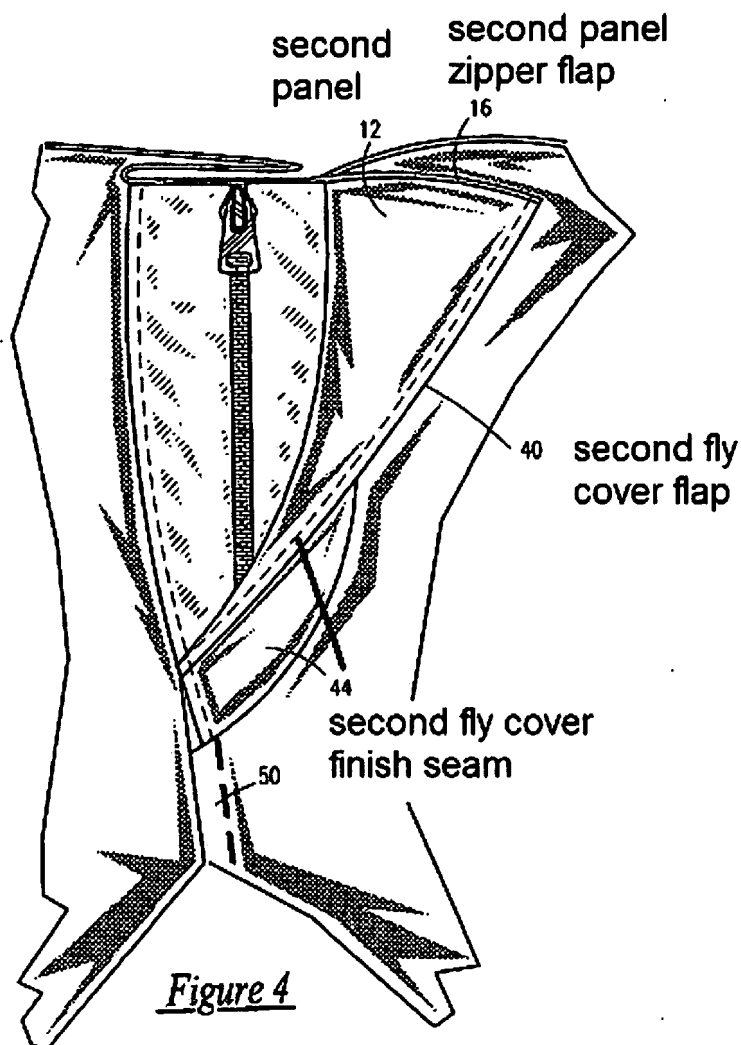


Figure 3

Fig. 4 of the present application, as amended in the amendment filed February 4, 2005, reproduced below and annotated, shows second (outer) fly cover flap 40 formed by attaching

second panel zipper flap 16 to second panel 12 by second fly cover finish seam 44. During preparation of the instant Brief, it was noticed that the reference line for seam 44 points to an indeterminate area. An annotated heavy line shows where the reference line for seam 44 should be.



Claim 1 concludes by reciting that the reversible zipper fly cover is symmetric so that each of the first and second fly cover flaps can be used as the outside of the reversible zipper fly cover.

The amendment filed July 26, 2005 presented Fig. HOSOGAI-1, reproduced below, which depicts in cross-sectional view, the reversible zipper fly of claim 1. First (inner) fly cover flap 32 is labeled, while the elements of second (outer) fly cover flap 40 are shown but not labeled. The zipper is the heavy horizontal line between the first and second fly cover flaps, and the zipper teeth are shown as the filled in box attached to the heavy horizontal line.

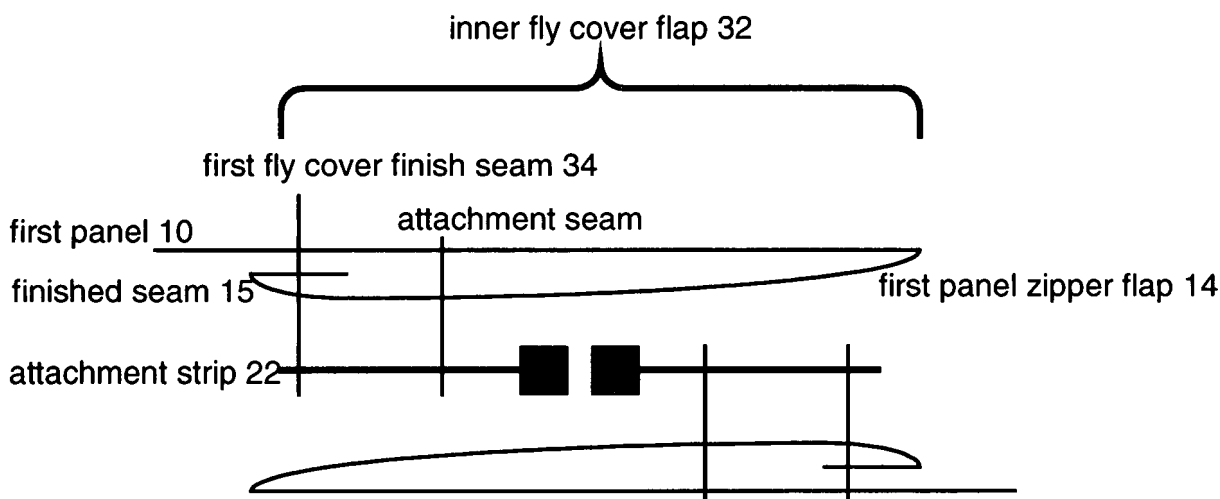


FIG. HOSOGAI-1

Claim 5

Claim 5 is a method claim generally corresponding to claim 1, and has support as explained above.

Claim 5 recites a method for producing a zipper fly cover by

- a. Connecting a first panel to a first panel zipper flap by a first finished seam;
- b. Connecting a second panel to a second panel zipper flap by a second finished seam;

- c. Attaching a first attachment strip of a reversible zipper to said first panel zipper flap, in a manner offset from an outer edge, by a first attachment seam, the first attachment strip being devoid of an enclosing hem;
- d. Attaching a second attachment strip of the reversible zipper to said second panel zipper flap, in a manner offset from an outer edge, by a second attachment seam, the second attachment strip being devoid of an enclosing hem;
- e. Forming a first fly cover flap by attaching the first panel zipper flap to the first panel by a first fly cover finish seam; and
- f. Forming a second fly cover flap by attaching the second panel zipper flap to the second panel by a second fly cover finish seam.

Claim 7

Claim 7 is directed to a reversible garment with a reversible fly, comprising first and second panel zipper flaps respectively attached to first and second panels of the reversible garment, the second panel zipper flap having the same shape as the first panel zipper flap.

See Fig. 3, above, showing first panel zipper flap 14 attached to first panel 10, and Fig. 4, above, showing second panel zipper flap 16 attached to second panel 12. From examining Figs. 3 and 4, first panel zipper flap 14 has the same shape as second panel zipper flap 16.

Claim 7 continues by reciting that a zipper having a reversible traveler guide is located between the first and second panel zipper flaps, the zipper having first and second attachment strips respectively affixed to the first and second panel zipper flaps by first and second attachment seams, each of the first and second attachment strips being devoid of an enclosing hem.

Each of Figs. 2-4, above, shows a zipper with a reversible traveler guide that travels along the zipper teeth.

As best seen in Fig. 4, the zipper is between first and second panel zipper flaps 14, 16.

As best seen in Fig. 2, the zipper has first and second attachment strips 22, 24 respectively affixed to the first and second panel zipper flaps 14, 16 by first and second attachment seams (unnumbered), each of the first and second attachment strips 22, 24 being devoid of an enclosing hem.

Claim 7 concludes by reciting that the reversible fly is symmetric so that each of the first and second sides of the garment can be used as the outside of the garment.

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

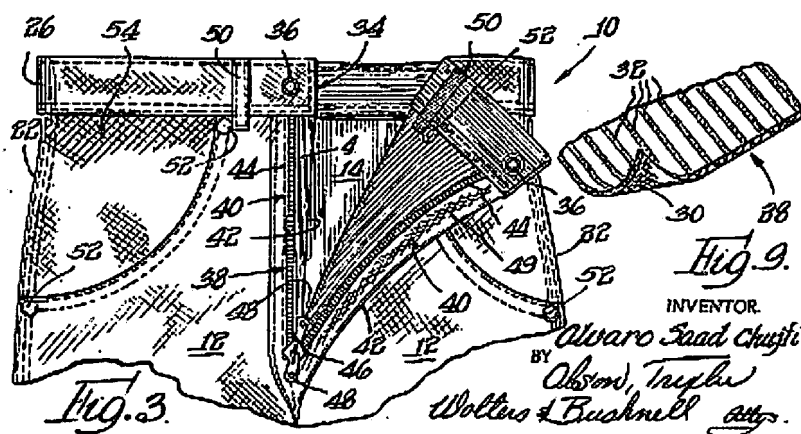
In paragraph 2 of the Final Office Action mailed September 22, 2006, claims 1, 5 and 6 were rejected under 35 USC 103(a) as unpatentable over U.S. Patent No. 3,234,564 (Chujfi).

In paragraph 3 of the Final Office Action mailed September 22, 2006, claims 7 and 8 were rejected under 35 USC 103 as unpatentable over Chujfi and GB Patent No. 2,153,656 (Vaghela).

(7) ARGUMENT

Claims 1, 5 and 6 are patentable over Chujfi.

Fig. 3 of Chujfi is reproduced below, along with the pertinent text in Chujfi's column 3:



3

In order to facilitate attachment of the slide fastener assembly 38, each of the front portions 12 is provided with a hem 40 which defines a linear, fastener mounting location. The hems 40 are spaced laterally inwardly from the folded-over marginal edges 42 of the respective front portions, and the slide fastener 38 includes, as is well known, interlocking strips 44, these strips being secured to the fastener mounting locations by being sewn into the hems 40. The slide fastener assembly 38 also includes a slide element 46 and a pair of operating tabs 48, which tabs are mounted respectively on the inner and outer faces of the slide for ready manipulation thereof in either of the reversible positions of the jean 10. Not only is the slide of the fastener assembly 38 readily accessible for manipulation from either side of the garment, but also and in compliance with an important feature of the invention, the slide of the fastener assembly remains accessible to the wearer of the garment from the same lateral side thereof regardless of which side of the garment is turned out.

Continuing with reference to FIG. 3, the two front portions 12 are seen to have confronting edge regions 49 disposed in overlapping relationship. As will be noted, the hems 40 that are used for mounting the strips 44 are spaced laterally inwardly from the margins or edges of the respective front portions of the jean, and the fabric members defined by the edge regions 49 between the hems 40 and the edges 42 act to conceal the fastener assembly regardless of which side of the jean is turned out. It should be noted that the edge regions 49 comprise folded fabric members which extend from the respective front portions 12 in opposite directions. This construction cooperates with the situation of hems 40 on substantially confronting surfaces of the overlapped front portions 12 to achieve the desired dual concealment of the slide fastener assembly 38.

The amendment filed July 26, 2005 presented Fig. CHUJFI-1, reproduced below, which depicts in cross-sectional view, as it is best understood, Chujfi's reversible zipper fly.

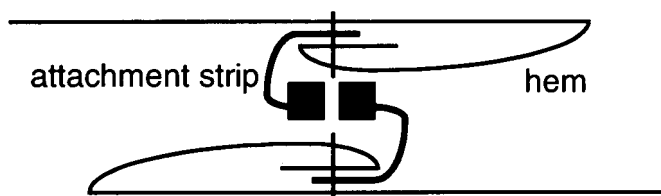


FIG. CHUJFI-1

Differences between claim 1 and Chujfi are that Chujfi fails to disclose the claimed first and second attachment seams that enable the first and second zipper attachment strips to be devoid of an enclosing hem. Instead, Chujfi shows a single seam that (a) attaches the first panel zipper flap to the first panel, and (b) attaches the first zipper attachment strip to the first panel zipper flap by enclosing the first zipper attachment strip in the hem formed between the first panel zipper flap and the first panel.

As shown in the Fig. CHUJFI-1 cross-section, Chujfi's design results in a concentration of eight (8) layers of fabric above and below the zipper teeth:

- the first panel
- the enclosed edge of the first zipper attachment strip
- the turned-under edge of the first panel zipper flap
- the first panel zipper flap
- the second panel zipper flap
- the turned under edge of the second panel zipper flap
- the enclosed edge of the second zipper attachment strip
- the second panel

In contrast, as shown in the Fig. HOSOGAI-1 cross-section, by making the first and second zipper attachment strips devoid of respective enclosing hems via first and second attachment seams, as distinct from the first and second fly cover finish seams, fabric layers can be distributed on either side of the zipper teeth, so that only the following four (4) layers of fabric are above and below the zipper teeth:

- the first panel
- the first panel zipper flap
- the second panel zipper flap
- the second panel

Importantly, as a consequence of using first and second attachment seams enabling the first and second zipper attachment strips to be devoid of respective enclosing hems, both (a) the turned-under edges of the first and second panel zipper flaps, and (b) the first and second zipper attachment strips, are disposed on either side of the zipper teeth.

A reversible zipper fly according to claim 1 is flatter and more supple than a reversible zipper fly according to Chujfi. Chujfi's teaching of concentrating fabric layers above and below the zipper teeth produces an area with eight (8) layers of fabric, instead of four (4) layers of fabric as occurs according to claim 1, and so Chujfi's zipper fly is bulky, stiff and bulging.

An advantage of reduction of bulkiness in the groin area, as achieved with the claimed zipper fly, is that the garment is more comfortable to wear.

Another advantage of the claimed zipper fly is that it does not present an artificial bulge that might attract ridicule to the garment's wearer.

Another disadvantage of Chujfi's zipper fly relative to the claimed zipper fly is that when the pants are formed of a stiff, bulky fabric such as denim, Chujfi's additional fabric layers make it more likely that the sewing needle will break during stitching of the zipper fly.

A further disadvantage of Chujfi's zipper fly relative to the claimed zipper fly is that Chujfi's additional layers of fabric pierced by a single seam require slower sewing, which is bad for mass production, since more time on the sewing machine contributes to the cost of the garment

Claim 1 is not obvious over Chujfi since some of the claimed elements, first and second attachment seams enabling the first and second zipper attachment strips to be devoid of respective enclosing hems, are missing from Chujfi.

Claim 1 is not obvious over Chujfi since one of ordinary skill in the art, even if trying to make Chujfi's fly less bulky, would not be motivated to add seams for this purpose. Generally, adding seams to an existing configuration is done for decorative reasons, or to more firmly attach fabric pieces to each other. It is simply not predictable that adding seams would result in a substantially less bulky zipper.

At most, the artisan of ordinary skill attempting to reduce Chujfi's bulk would replace Chujfi's zipper having two tabs 48 (see Fig. 3 of Chujfi) with a conventional reversible zipper having one tab that can be flipped along the top of the zipper traveler guide to be on the operative side of the zipper. But, reducing the number of zipper tabs from two to one still does not cure the bulkiness due eight layers of fabric, which is an inevitable result of using only one seam to attach a zipper fly panel to a panel *and* to attach a zipper attachment strip to the zipper fly panel, as Chujfi does.

The Examiner erred by simply ignoring the issue of first and second attachment seams that are distinct from first and second fly cover finish seams, as recited in claim 1.

Instead, the Examiner implicitly asserts that Chujfi's single seam that performs the functions of both of the claimed attachment seam and fly cover finish seam makes the claimed invention obvious. But, this is plainly an error, since Chujfi's single seam results in a concentration of eight layers of fabric around the zipper teeth, whereas the claimed invention enables a dispersion of fabric layers so that there are only four layers of fabric around the zipper teeth.

At the bottom of page 3 of the September 22, 2006 Office Action, the Examiner stated,

It would have been obvious to have provided the first and second attachment strips being devoid of an enclosing hem or having an enclosing hem, because as long as the attachment strips are attached to the first and second zipper flaps and provide a reversible fly structure[,] the presence or not of an enclosing hem does not [a]ffect the reversibility of the zipper structure and therefore can be there or not.

The Examiner's argument amounts to considering only reversibility of the claimed zipper fly as important, and then using that as a justification for ignoring structural differences between the claimed zipper fly and Chujfi's zipper fly. This is pure error. As explained above, reversibility is not the only issue, rather, bulkiness of the reversible zipper fly is a significant issue, and the bulkiness issue is a consequence of the structure of the zipper fly.

At the top of page 4 of the September 22, 2006 Office Action, the Examiner continued,

There is no discussion in the originally filed disclosure detailing the criticality or advantage of the first and second attachment strips being devoid of an enclosing hem.

There is no legal requirement that the specification explicitly state all advantages of a disclosed structure or that an applicant be precluded from arguing those advantages during prosecution of the patent application.

“To require [an applicant] ... to include evidence and arguments in the specification ... would be to require patent applicants to divine the rejections the PTO will proffer when patent applications are filed.” *In re Chu*, 66 F.3d 292, 298 (Fed. Cir. 1995) (none of the arguments would require any change in the construction of the disclosed apparatus). “We found no cases supporting the position that a patent applicant’s evidence and/or arguments traversing a § 103 rejection must be contained within the specification. There is no logical support for such a proposition as well, given that obviousness is determined by the totality of the record including, in some instances most significantly, the evidence and arguments proffered during the give-and-take of ex parte patent prosecution.” *Id.* at 299.

See also *In re Zenitz*, 333 F.2d 924, 928 (C.C.P.A. 1964)(evidence and arguments that claimed compound minimized side effects of hypotensive activity must be considered because this undisclosed property would inherently flow from use of compound as a tranquilizer). “[T]he mere failure of a patentee to realize all the benefits and possibilities of his invention is not fatal.”

Id. at 927. “By disclosing in a patent application a device that inherently performs a function, operates according to a theory, or has an advantage, a patent applicant necessarily discloses that function, theory or advantage even though he says nothing concerning it. The application may later be amended to recite the function, theory or advantage without introducing prohibited new matter.” *In re Reynolds*, 443 F.2d 384, 388 (C.C.P.A. 1971); *In re Smythe*, 480 F.2d 1376, 1384 (C.C.P.A. 1973).

Claim 5 is a method claim generally corresponding to claim 1, and is not made obvious by Chujfi for the reasons described above. Claim 6 depends from claim 5, and so incorporates its features that patentably distinguish from Chujfi.

Affirming patentability of claims 1, 5 and 6 over Chujfi is requested.

Claims 7 and 8 are patentable over Chujfi and Vaghela.

Vaghela was cited for its disclosure of a zipper with a reversible traveler guide.

The amendment filed July 26, 2005 presented Fig. VAGHELA-1, reproduced below, which depicts in cross-sectional view, Vaghela’s reversible zipper fly.

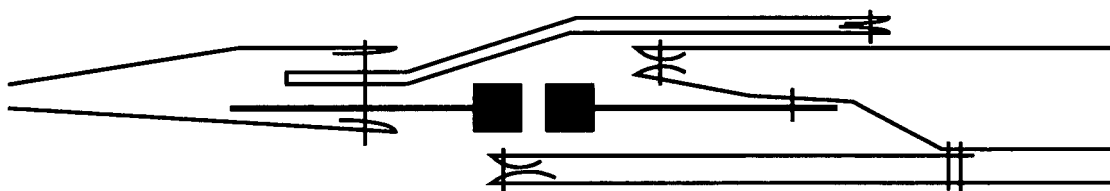


FIG. VAGHELA-1

The proper combination of Chujfi and Vaghela is to replace Chujfi’s pair of zipper tabs 48 with Vaghela’s one reversible traveler guide, which, while an improvement, does not eliminate the bulk due to the additional layers of Chujfi’s enclosing hems. Accordingly, claim 7 is patentably distinguished from any proper combination of Chujfi and Vaghela.

Each of Chujfi and Vaghela teaches away from a zipper having first and second attachment strips respectively affixed to the first and second panel zipper flaps by first and second attachment seams, each of the first and second attachment strips being devoid of an enclosing hem, with the reversible zipper fly cover being symmetric so that each of the first and second fly cover flaps can be used as the outside of the reversible zipper fly cover, as specifically recited in claim 7.

Claim 8 depends from claim 7, and so incorporates its features that patentably distinguish from Chujfi.

Affirming patentability of claims 7 and 8 over Chujfi and Vaghela is requested.

(8) CLAIMS APPENDIX

1. An improved reversible zipper fly cover comprising:
a zipper having a first attachment strip opposite a second attachment strip;
a first panel zipper flap connected to said first attachment strip by a first attachment seam,
the first attachment strip being devoid of an enclosing hem;
a second panel zipper flap connected to said second attachment strip by a second attachment seam, the second attachment strip being devoid of an enclosing hem;
a first fly cover flap formed by attaching said first panel zipper flap to a first panel by a first fly cover finish seam;
a second fly cover flap formed by attaching said second panel zipper flap to a second panel by a second fly cover finish seam,
wherein said reversible zipper fly cover is symmetric so that each of said first and second fly cover flaps can be used as the outside of said reversible zipper fly cover.

2 -4 (canceled)

5. A method for producing a zipper fly cover, said method comprising the steps of :
 - a. Connecting a first panel to a first panel zipper flap by a first finished seam;
 - b. Connecting a second panel to a second panel zipper flap by a second finished seam;
 - c. Attaching a first attachment strip of a reversible zipper to said first panel zipper flap, in a manner offset from an outer edge, by a first attachment seam, the first attachment strip being devoid of an enclosing hem;
 - d. Attaching a second attachment strip of the reversible zipper to said second panel zipper flap, in a manner offset from an outer edge, by a second attachment seam, the second attachment strip being devoid of an enclosing hem;
 - e. Forming a first fly cover flap by attaching the first panel zipper flap to the first panel by a first fly cover finish seam; and
 - f. Forming a second fly cover flap by attaching the second panel zipper flap to the second panel by a second fly cover finish seam.
6. The method of claim 5, further comprising the step of forming a crotch seam extending laterally downward.
7. A reversible garment with a reversible fly, comprising:
 - a first panel zipper flap attached to a first panel of the reversible garment,
 - a second panel zipper flap attached to a second panel of the reversible garment, the second panel zipper flap having the same shape as the first panel zipper flap, and
 - a zipper having a reversible traveler guide located between the first and second panel zipper flaps, the zipper having a first attachment strip affixed to the first panel zipper flap by a first attachment seam and a second attachment strip affixed to the second panel zipper flap by a

second attachment seam, the first and second attachment strips being devoid of an enclosing hem,

wherein the reversible fly is symmetric so that each of the first and second sides of the garment can be used as the outside of the garment.

8. The reversible garment of claim 7, wherein the reversible traveler guide can be positioned to be accessible from each of the first and second sides of the garment.

(9) EVIDENCE APPENDIX

None

(10) RELATED PROCEEDINGS APPENDIX

None

Respectfully submitted,

Date: July 23, 2007

Brenda Pomerance

Brenda Pomerance

Address:
Law Office of Brenda Pomerance
260 West 52 St. Ste. 27B
New York, NY 10019
voice 212 245-3940